

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)	
	)	Case No. 97-0853-CR-Middlebrooks
v.)	
	)	Magistrate Dubé
ATLAS IRON PROCESSORS, INC.,	)	(Amended order of reference dated May 7, 1998)
et al.,)	
)	
Defendants.	)	MOTION OF UNITED STATES
	)	REQUESTING AN ORDER
	)	REQUIRING DEFENDANTS TO
	)	PRODUCE REPORTS OR RESULTS
	)	MADE BY EXPERT WITNESSES
	)	(INCLUDING ECONOMIC EXPERTS)
	)	PURSUANT TO THE STANDING
	)	DISCOVERY ORDER AND
	)	<u>FED. R. CRIM. P. 16(b)(1)(B)</u>

COMES NOW the United States and files this motion requesting that the Court order the defendants Atlas Iron Processors, Inc., Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., David Giordano¹ (hereinafter "Atlas defendants") to produce reports or results made by expert witnesses (including economic experts) in connection with this case which the defendants intend to introduce at trial.²

On December 2, 1997, the Court issued a Standing Discovery Order. On December 15, 1997, the United States filed its response to the Court's Standing Discovery Order. In its response the United States specifically requested that

¹ Pursuant to Local Rule 88.9 the United States also contacted Ben Kuehne, counsel for defendant Randolph J. Weil. Kuehne has agreed to voluntarily provide the United States with this Rule 16 and Standing Discovery Order material no later than December 18, 1998.

² For the convenience of the Court, the United States has combined its motion and the supporting memorandum.

materials be produced to the United States pursuant to ¶B of the Standing Discovery Order and Fed. R. Crim. P. Rule 16. See, e.g., Response of United States To Standing Discovery Order Concerning Defendant Atlas Iron Processors, Inc., ¶B.³

Between December 19, 1997, and January 16, 1998, the Atlas defendants filed separate responses to the Standing Discovery Order. In each response the Atlas defendants stated they might use an expert witness after his (or its) counsel had sufficient opportunity to review and analyze the discovery productions in the case. However, each Atlas defendant also reserved the right to supplement his or its response to the Standing Discovery Order once the United States had complied with the provisions set forth in the Standing Discovery Order.

The United States complied with the Standing Discovery Order's provisions nearly seven months ago, shortly after Magistrate Judge Dubé issued a sealed protective order on May 26, 1998. To date the United States has not received supplemental responses from any of the Atlas defendants. In addition to fully complying with the Standing Discovery Order, on December 11, 1998, Ian D. Hoffman, an Antitrust Division attorney assigned to this case made telephone contact with each of the Atlas defendants and informed them the United States does not intend to use an expert (including an economic expert) during its case in chief. The United States learned that the defendants intend to offer expert economic testimony as part of their defense at trial. Having complied with Local Rule 88.9, the United States respectfully requests that the Court order the defendants to fully comply with the requirements of the Standing Discovery Order, which provides:

- B. The defendant(s) shall permit the government to inspect and copy the following items, or copies thereof, or supply copies

³ Paragraph B provided:

The United States requests disclosure and production of materials enumerated as items 1, 2, and 3 of Section B of the Standing Discovery Order. This request is made pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure.

thereof, which are within the possession, custody or control of the defendant(s), the existence of which is known or by the exercise of due diligence may become known to the defendant(s):

2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case which the defendant(s) intend(s) to introduce as evidence in chief at trial, or which were prepared by a defense witness who will testify concerning the contents thereof.

Standing Discovery Order ¶B(2). The Standing Discovery Order mirrors the language of Rule 16(b)(1)(B) which provides:

If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony.

Fed. R. Crim. P. 16(b)(1)(B) .

This is an antitrust case. Though the United States intends to present a simple and straightforward case-in-chief, it's ability to cross-examine the defendants' expert(s) is significantly hampered by the defendants' non-compliance with the Standing Discovery Order and Rule 16. The purpose of these provisions is to avoid unfair surprise and/or delay at trial. The United States' request for prompt compliance with these provision is based on its need to adequately prepare a rebuttal expert.

The trial is less than six weeks away. The United States respectfully requests that the Court enter an Order requiring the defendants to produce the results or reports of any expert witnesses (including economic experts) they intend to call at trial and to identify such experts. To avoid further prejudice, the United States requests an Order requiring these materials to be produced forthwith, but no later than December 23, 1998. A proposed Order is attached.

Respectfully submitted,

WILLIAM J. OBERDICK
Acting Chief
Cleveland Field Office

By: RICHARD T. HAMILTON, JR.
Court I.D. No. A5500338

PAUL L. BINDER
Court I.D. No. A5500339

IAN D. HOFFMAN
Court I.D. No. A5500343

Trial Attorneys,
U.S. Department of Justice
Antitrust Division
Plaza 9 Building
55 Erieview Plaza, Suite 700
Cleveland, OH 44114-1816
Phone: (216) 522-4107
FAX: (216) 522-8332